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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/654,883	09/05/2003	Kelly V. Wallace	3764.00	6626

7590 09/09/2004

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EXAMINER

FISCHMANN, BRYAN R

ART UNIT PAPER NUMBER

3618

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/654,883	Applicant(s) WALLACE ET AL.	
	Examiner Bryan Fischmann	Art Unit 3618	<i>NW</i>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2003.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9-5-03</u> . | 6) <input type="checkbox"/> Other: _____  |

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***Specification***

1. The disclosure is objected to because of the following:

B) It is considered unclear why line 12 of page 3 recites "balancing box 12" while line 10 of page 3 recites "box 12" and line 13 of page 3 recites "wheeling box 12".

See also line 16 of page 3 and line 10 of page 4.

***Claim Objections***

2. Claim 1 is objected to because of the following:

A) It is believed that the wording of claim 1 would be improved if the word "a" were inserted before the word "front" (first occurrence) in the second line of the claim.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Franklin, US Patent 3,460,850.

Franklin teaches a laundry caddy (see comments below), comprising:

a box including a bottom wall (14) with a front and opposed sides (see drawing figures) as well as a front wall (12) and a pair of opposed side walls (13) and being secured to, and extending upwardly from, said front and opposed sides of said bottom

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wall, said box also including a top wall (29) being hingedly (Figure 1) secured to one of said opposed side walls (via box structure) and a back wall (18) being hingedly (20) secured (Figure 1) to one of said opposed side walls, said top wall and said back wall each being capable of moving between a closed condition wherein access to the interior of said box is not easily obtained and an open condition wherein access to the interior of said box is easily obtained;

a pair of wheels (51) being secured to said bottom wall of said box;

a handle (57) being secured to said box and extending upwardly therefrom; and,

a pair of latches (22 and 30) being secured to said box for selectively retaining said top wall and said back wall in a closed condition.

Regarding the claim 1 limitation "a laundry caddy", it is noted this limitation is directed toward intended use. The recitation of intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the function or intended use, then it meets the claim. *In re Casey*, 370 F.2d 576, 152 USPQ 235, 238 (CCPA 1967). It is the Examiner's position that the prior art is capable of performing the recited functions.

Once this prima facie case has been established, the burden shifts to the applicant to show that the prior art structure does not possess the functionally or intended use defined limitations of his claimed apparatus. *In re Schreiber*, 128 F.3d 1473, 44 USPQ2d 1429, 1432 (Fed. Cir. 1997).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franklin, US Patent 3,460,950, in view of PCT Application WO 91/05720.

Franklin teaches a laundry caddy (see comments above), comprising:

a box including a bottom wall (14) with a front and opposed sides (see drawing figures) as well as a front wall (12) and a pair of opposed side walls (13) and being secured to, and extending upwardly from, said front and opposed sides of said bottom wall, said box also including a top wall (29) being hingedly (Figure 1) secured to one of said opposed side walls (via box structure) and a back wall (18) being hingedly (20) secured (Figure 1) to one of said opposed side walls, said top wall and said back wall each being capable of moving between a closed condition wherein access to the interior of said box is not easily obtained and an open condition wherein access to the interior of said box is easily obtained;

a pair of wheels (51) being secured to said bottom wall of said box;

a handle (57) being secured to said box and extending upwardly therefrom; and,

a pair of latches (22 and 30) being secured to said box for selectively retaining said top wall and said back wall in a closed condition.

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Franklin fails to teach a pair of legs secured to the bottom wall remote from the pair of wheels.

However, WO 91/04720 teaches a pair of legs (28) secured to the bottom wall remote from the pair of wheels (Figures 3 and 4). A pair of legs secured to the bottom wall remote from the pair of wheels is advantageous in that the cart may remain "level" as well as making unwanted movement of the cart less likely.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize pair of legs secured to the bottom wall remote from the pair of wheels of Franklin, as taught by WO 91/05720.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Rosenberry, Giovanelli, Brighton, et al, Zorraro, GB 2102352 – teaches a wheeled cart with pivoting panels

8. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Bryan Fischmann whose telephone number is (703) 306-5955. The examiner can normally be reached on Monday through Friday from 8:30 to 5:00.

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If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis, can be reached on (703) 308-2560. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
BRYAN FISCHMANN  
PRIMARY EXAMINER